THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NOS.1125, 2274 and 2505 of 2007

Dated 12-06-2007

WRIT PETITION NO.1125 OF 2007

Between:

Dadi Jagan Prabhakar …Petitioner

And

The Commissioner,
Ankapalle Municipality …Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NOS.1125, 2274 and 2505 of 2007

COMMON ORDER ***(Per the Hon'ble Sri Justice Bilal Nazki):***

Heard learned counsel for the parties and perused the record.

Since the questions of law and fact involved in all the writ petitions is one and the same, they are being disposed of by this common order.

Writ Petition Nos.1125 and 2505 of 2007 are filed by the Master Cable Operator and ***Writ Petition No.2274 of 2007*** is filed by the Cable Operators jointly.

Writ Petition Nos.1125 and 2505 of 2007

It is an admitted fact that the petitioner in these two writ petitions is a Master Cable Operator and he received a notice,
dated 21-12-2006, demanding entertainment tax, at the first instance from the Ankapalle Municipality, which is assailed in Writ Petition No.1125 of 2007. This notice raised the demand of Rs.34,56,000/-. The tax demanded through this notice was for the period from October, 2000 to December, 2002 and from January 2003 to October 2006. Thereafter proceedings, dated 12-01-2007,
were issued by the Commercial Tax Officer, Ankapalle raising a demand of Rs.34,56,000/- and distraint order, dated 18-01-2007, in form No.I was also issued against the petitioner, which have been challenged by the petitioner in W.P.No.2505 of 2007. The Commercial Tax Officer raised this demand basing on the information received by him from the Ankapalle Municipality.

G.O.Ms.No.1644 had been issued on 08-11-2006 by which the power to collect tax under the Entertainments Tax Act, 1939
(for short "the Act") was taken away from the Municipality and given to the Commercial Tax Officers. Therefore, the notice in Writ Petition No.2505 of 2007 was issued by the Commercial Tax Authorities on 12-01-2007.

The contention of the learned counsel for the petitioner is that at no stage either by the Municipality or by the Commercial Tax Officer any assessment was made against the petitioner in terms of Section 15-A of the Act. He submits that no demand can be raised by the respondents unless an assessment is made and it is fairly conceded by both counsel appearing for the Commercial Taxes and also for the Ankapalle Municipality that no assessment, at any stage, had been made against the petitioner. Only notices have been issued creating the demands on the basis of some information received by the Ankapalle Municipality and the Commercial Tax Officer has also raised the demand only on the basis of the information received by him from the Ankapalle Municipality.

Section 15-A of the Act lays down

"*15-A.Levy of Entertainment Tax on Cable Service:- (1) Every Master Cable Operator shall pay entertainment tax every month for the number of connections provided to the subscribers either directly or through this cable operator at the rates specified under each category as given in the table below:-*

TABLE

Sl.No.	*Category*	*Local Area*	*Rate per Connection per month*
1	*2*	*3*	*4*
1.	*A*	*Municipal Corporations and Secunderabad Cantonment area*	*Rs.5/-*
2.	*B*	*Selection Grade Municipalities*	*Rs.4/-*
3.	*C*	*Grade I & II Municipalities*	*Rs.3/-*
4.	*D*	*Other Municipalities*	*Rs.2/-*
5.	*E*	*Major Gram Panchayats*	*Rs.200/- p.m (irrespective of no. of connections.*
6.	*F*	*Minor Gram Panchayats*	*Rs.100/- p.m (Irrespective of no.of connections)*

(2) xxx

(3) The manner of levy and collection of tax under this section submission of returns and other incidental matters shall be such as may be prescribed.

(4) The provisions of Sections 9B to 11, 14 to 19 and Section 20 shall mutates matandis apply in regard to the tax payable under this section as they apply to the tax payable under Sections 4 and 5 of this Act.

(5) The proceeds of the tax payable under this section within the limits of any local authority shall be apportioned between the State Government and the local authority concerned in a ratio of 10:90 respectively and the proceeds made over to the local authorities shall be utilized for such purposes as may be prescribed.

After an assessment is made, the assessee has a right to file an appeal, under Section 9-B of the Act, if he is aggrieved of the said assessment. Therefore, if there is no assessment, no demand can be raised because it will adversely affect the assessee and he would not be able to know that he was assessed and what were the amounts for which he was assessed and whether the amounts assessed against him were correct or not and he would not also be able to file any appeal against the order of assessment.

In this view of the matter, the writ petitions are allowed and the notice, dated 21-12-2006, challenged in Writ Petition No.1125 of 2007 and the proceedings, dated 12-01-2007 and 18-01-2007 respectively, challenged in Writ Petition No.2505 of 2007 cannot sustain and are accordingly quashed.

Since the power to collect the entertainment tax is now with the Commercial Tax Authorities, therefore, the Commercial Tax Authorities are at liberty to proceed with the assessment of tax in accordance with Section 15-A of the Act. If the petitioner wants to file any returns he may do so within two weeks from today. If returns are already filed, they shall be taken into consideration by the Commercial Tax Authorities while making the assessment.

W.P.No.2274 of 2007:

This writ petition has been filed by the cable operators jointly. The tax was demanded from the Master Cable Operator on the ground that he was supplying signals to certain cable operators and notice dated 21-12-2006 and

consequential distraint order dated 12-01-2007 were also issued to those cable operators, which are assailed in this writ petition. The demand raised in W.P. Nos.1125 and 2505 of 2007 and in this writ petition is same. Therefore, for the reasons given in W.P. Nos.1125 and 2505 of 2007, this writ petition is also allowed and the notice dated 21-12-2006 and the consequential distraint order dated 12-01-2007 are quashed. No order as to costs.

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(Bilal Nazki, J)

Dated 12th June, 2007

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(S.Ananda Reddy, J)

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